

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

2 Application Serial No.09/635,988
3 Filing Date 08/09/2000
4 Inventorship..... Brown et al.
5 Applicant.....Microsoft Corp.
6 Group Art Unit2157
7 Examiner El Chanti, Hussein A.
8 Attorney's Docket No. MS1-565US
9 Title: Fast Dynamic Measurement of Bandwidth in a TCP Network Environment

10 **PRE-APPEAL BRIEF REQUEST FOR REVIEW**

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12 Commissioner of Patents and Trademarks
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19 **REMARKS**

20 The Pre-Appeal Panel (hereinafter "Panel") is respectfully requested to
21 consider this Request, which is submitted in accordance with the Pre-Appeal Brief
22 Conference Program rules. A listing of the pending claims is provided in the
23 Response filed with the Office on July 10, 2006. A summary of the claim
24 rejections is provided on pages 2-6 of the Final Office action dated September 8,
25 2006, (hereinafter "Office action"). The Applicant summarized the rejections of
 record in this Request as well. The Panel is requested to reconsider the rejections
 of record in view of the following comments and the arguments currently of
 record. Because of the requirements of brevity, Applicant will discuss only

1 independent claims 9, 26, 31 and 34.

2
3 **Rejection of independent claims 9, 31 and 34**

4 Independent claims 9, 31 and 34 stand rejected under 35 U.S.C. §102(e) as
5 being anticipated over U.S. Patent No. 6,421,348 to Gaudet et al. (hereinafter
6 “Gaudet”). In making out the rejection of claims 9, 31 and 34, the Office argues
7 that the subject matter of each is fully provided by Gaudet. To the contrary,
8 Gaudet fails to provide all of respective features of these claims.

9 Specifically, each of claims 9, 31, 34 recites, *inter alia*: “immediately
10 thereafter, sending at least one “push” packet to avert a transmission delay
11 between packets in the set, wherein *the “push” packet is specifically configured*
12 *to force the transmission of the set of packets by the communication device to*
13 *avoid the transmission delay caused by packet buffering by the communication*
14 *device on the network.”* (Emphasis added.)

15 The Office cites to Col. 5, lines 30-43 of Gaudet as disclosing the foregoing
16 subject matter (pages 2-3 of Office action). None the less, neither the Office-cited
17 portion nor any other part of Gaudet provides for the specific “push” packet or
18 any operations responsive thereto as recited by independent claims 9, 31 and 34.

19 Rather, Gaudet refers to a “drain threshold” that is determinative in
20 triggering the transmission of data from a bus FIFO, or the passing of data stored
21 in memory to a broadcast buffer (Col. 4, line 63 to Col. 5, line 43 of Gaudet).
22 However, Gaudet is completely silent as to how such a “drain threshold” is
23 quantitatively determined, adjusted or implemented, in any way. Gaudet mentions
24 no other means or methods, aside from the “drain threshold”, for triggering the
25 transmission or passing of buffered data.

1 Gaudet fails to provide for the particular ***“push” packet*** as recited by
2 independent claims 9, 31, and 34. For at least the foregoing reasons, as well as for
3 those reasons argued previously in prosecution, the Applicant asserts that
4 respective § 102 rejections against independent claims 9, 31 and 34 are
5 unsupportable and that the claims are allowable.

6 7 **The Rejection of Independent Claim 26**

8 Independent claim 26 stand rejected under 35 U.S.C. §102(e) as being
9 anticipated over Gaudet as cited above. In making out the rejection of claim 26,
10 the Office argues that its subject matter is fully provided by Gaudet (page 3 of
11 Office action). In fact, Gaudet fails to provide all of respective features of this
12 claim.

13 Specifically, claim 26 recites, *inter alia*: “immediately thereafter, sending at
14 least one “push” packet to avert a transmission delay between packets in the pair,
15 wherein ***the “push” packet is specifically configured to force the transmission of***
16 ***the set of packets by the communication device to avoid the transmission delay***
17 ***caused by packet buffering by the communication device on the network.***”

18 For reasons consistent with those argued above in regard to claims 9, 31
19 and 34, the Applicant asserts that Gaudet fails to provide the specific ***“push”***
20 ***packet*** as recited the subject matter of independent claim 26. For at least these
21 reasons, as well as for those reasons argued previously in prosecution, the
22 Applicant asserts that the § 102 rejection against independent claim 26 is
23 unsupportable and that the claim is allowable.

1 **Conclusion**

2 In accordance with the above, the Panel is respectfully requested to reconsider
3 and withdraw the rejections of the claims. The pending claims are in condition for
4 allowance. Applicant respectfully requests reconsideration and prompt allowance on
5 the subject application.

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7 Respectfully Submitted,

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9 Dated: 9 Jan 2007

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